Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINNITAL.

Appeal from Order No. 336 of 2004

The New India Assurance Co. Ltd.
Divisional Office, Opposite Judges Court,
Nainital Road,
Haldwani, (Nainital). **…. Appellant.**

versus

1. Chaman lal, S/O Sri Bhagita Lal,
   R/o Village Bhatia, P.O. Bhatia
   Tahsil Badkote, District Uttarkashi.
2. Kishore Lal, S/O Badru
   R/O Village Kansola, Patti Mungarsanti,
   Tahsil Badkote, District Uttarkashi.

… Respondents.

Sri R. B. Agrawal, Advocate, learned counsel for the appellant.
Sri B.S. Negi, Advocate, learned counsel for the respondents.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Date December 20, 2004.

(Per Hon'ble B.S. Verma, J.)

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and award, dated 19-7-2004, passed by Motor Accident Claims Tribunal/Districte Judge, Uttarkashi (***in short the tribunal***) in M.A.C. Petition No. 48 of 2002, Chaman Lal Vs. Kishore Lal and another, whereby the learned Tribunal awarded compensation of Rs. 2,14,700/- along with interest @ 7 % per annum against the appellant. Aggrieved, the Insurance Company has come up in appeal.

Claimant Chaman Lal, on 23-7-2002, was travelling by bus No. UA 07-B-6290 from Dehradun to Naugaon. Due to rash and negligent driving by its driver, the vehicle met with accident and fell

into a ravine with the result he sustained simple and grievous injuries on different parts of body. He was removed to Naugaon for treatment and later-on shifted to Doon Hospital, Dehradun on 25.7.2002 where he remained hospitalized upto 13.8.2002. The claimant incurred Rs. 1,25,000/- on his treatment besides other expenditure on special diet, attendant, etc. due to injuries, he lost prospect of his profession of skilled carpenter, hence claim petition was filed for compensation of Rs. 26,90,100/- of different counts.

Owner of the bus in his written statement admitted the accident but asserted that it occurred due to mechanical failure of the vehicle and not due to rash and negligent act of the driver and that the vehicle was duly insured with the appellant, therefore, liability for compensation rests on the Insurance Company. The Insurance Company admitted the accident, but asserted that the driver was not having a valid driving licence at the time of accident. It disputed the age, income and quantum of compensation.

Learned Tribunal framed necessary Issues in the case. Ultimately it held that the accident occurred due to rash and negligent driving by the driver of the vehicle. It further held that the vehicle was duly insured. Finally, considering the injuries, disability, age etc., compensation of Rs. 2,14,700/- was awarded along with interest @ 7% per annum.

Learned counsel for the appellant vehemently submitted that the accident was caused due to mechanical failure of the vehicle, therefore, the finding of learned Tribunal to the contrary is perverse PW 1, the claimant himself, gave eye-witness account of the entire accident. He has given categorical statement that accident was caused due to rash and negligent driving by the driver of the bus. On the other hand, no evidence was led by the opposite parties to indicate that accident was caused due to mechanical failure in the bus. No technical examination report was filed by the appellant to support its stand. The claimant was cross-examined by the appellant,

but no suggestion was made to him that the accident occurred due to mechanical failure of the vehicle. This is strong circumstance against the appellant. The finding of the learned Tribunal on this count does not require interference by this Court.

Learned counsel for the Insurance Company next argued that the driver of the ill-fated vehicle was not having a valid driving licence with an endorsement for hill driving and there was no entry to that effect in the office of the R.T.O. We have considered the submission. There is report of the investigator of the Insurance Company on the record, (Paper No. 57-C) relied upon by the appellant itself. It was mentioned therein that the insured produced photo-copy of the Driving Licence showing entry of hill endorsement dated 16.1.2002. The contention that no such entry was found in the licence register of the R.T.O., therefore, the driving licence was invalid is misconceived for the simple reason because it was not incumbent upon the insured to have made such an entry in the licence register. Appellant has not examined the authority in the witness box to controvert the veracity of the hill endorsement made on the driving licence. Paper No. 42-C is copy of the driving licence, issued in the name of Shyam Lal. Learned Tribunal gave clear-cut finding that the driver was having valid and effective driving licence. It was for the appellant to have led concrete evidence to show that the driver of the vehicle was not having valid driving licence with hill endorsement. It is not disputed that Shyam Lal was the driver of the vehicle at the time of accident. Learned counsel could not point out any infirmity in the finding of the Tribunal on Issue No.3. The argument is not tenable.

It was also contended on behalf of the appellant that that the accident occurred at night between 12 p.m.-1 a.m. on the fateful day and there was ban on plying of vehicles between 8 p.m. and 5 a.m. in the hill areas by the government, therefore, the owner and the driver along were responsible to pay compensation. Learned counsel made a reference to paper no. 50-Kha on record, which is an

application under Order 6, Rule 17 C.P.C. for amendment of pleadings. It was submitted that the learned Tribunal failed to consider the said application. The submission is misconceived. The record revealed that the application of the appellant was rejected by the Tribunal vide order dated 23.2.2004. The impugned judgment and award was passed on 19-7-2004. The appellant did not take recourse to challenge the said order before the High Court by way of appeal or revision in the intervening period, therefore, the appellant cannot take benefit of its own weakness at this stage.

Lastly, the learned counsel for the appellant has assailed the finding on the quantum of compensation. It was submitted that appellant moved application under Section 170 of the Act for permission to cross-examined the claimant's witness. We have gone through the application, 54-C. The Tribunal has passed an order to the effect ***Keep on record***. Owner of vehicle has contested the claim petition. Unless there is specific permission granted under Section 170 of the Motor Vehicles Act, or there is a finding of the Tribunal that there was collusion between the claimant and the person against whom the claim has been made, it is not open to the appellant to challenge the quantum of compensation as well as finding regarding negligence or contributory negligence in appeal. We are fortified in our view by the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002) 7, Supreme Court Cases, 456].*** In that case, it has been observed that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."***

Even otherwise we have gone through the material on record to examined the quantum of compensation awarded by the Tribunal. Claimant Chaman Lal examined himself as P.W.1, who

testified that he was a skilled carpenter and due to accidental injuries he is now unfit to earn his daily wages. The injury report paper no. 19-C shows that the claimant suffered fracture of hip bone besides other injuries, for which he was referred to District Hospital Dehradun. In the accident, according to P.W.1, he suffered injuries in his back bone. His statement that he was incapacitated to perform his work was not seriously challenged in the cross-examination.

It was contended on behalf of the appellant that the finding of 15% disability was not proved on record by any medical evidence. It is true that learned Tribunal, at its own, has determined the disability of the claimant at 15% but the testimony of P.W.1 clearly shows that despite his treatment, he is not as fit as before and presently, he is unable to work in full capacity throughout his life. Certainly this much is proved that the income of the claimant was affected on account of his injuries. The Tribunal awarded compensation of Rs. 39,500/- towards medical expenses, Rs. 10,000/- towards taxi-fare, rent and attendants, Rs. 20,000/- towards pain and suffering, Rs. 30,000/- towards loss of income and Rs. 1,15,000/- towards future loss of income and amenities of life, etc. In determining loss of income of Rs. 1,15,000/-, income of the injured was assessed at Rs.4,000/- per month, i.e. Rs. 48,000/- per annum. The Tribunal applied multiplier of 16 thereby total amount of Rs. 7,68,000/- was calculated. Out of this amount, 15% was taken to assess loss of income, which came to Rs. 1,15,200/-. Once the loss of income of Rs. 1,15,200/- was determined by applying multiplier of 16 and considering the age of the injured-claimant, in our opinion award of additional amount of Rs. 30,000/- by the Tribunal was not justified. To this extent alone, the impugned judgment and award is liable to be modified. Thus after reducing the amount of compensation by Rs. 30,000/-, the claimant is entitled to get Rs.1,84,700/-. Rest of the finding of the Tribunal does not require interference by this Court.

No other point was urged or argued before us in appeal.

For the reasons and discussion aforementioned, the appeal deserves to be partly allowed.

The appeal is partly allowed. The judgment and award, dated 19-7-2004 is modified to the extent that the amount of compensation is reduced to Rs. **1,84,700/-** instead of Rs. 2,14,700/-, as awarded by the Tribunal. On this amount the claimant shall be entitled to the interest @ 7% per annum from the date of filing of the claim petition (30-10-2002) till payment. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimant.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

RCP